

110TH CONGRESS
2D SESSION

S. 3596

To stabilize the small business lending market, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To stabilize the small business lending market, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Lend-
5 ing Market Stabilization Act of 2008”.

6 **SEC. 2. SMALL BUSINESS LENDING MARKET STABILIZA-**
7 **TION.**

8 (a) FEES.—To the extent the cost of such reduction
9 in fees is offset by appropriations—

10 (1) with respect to each loan guaranteed under
11 section 7(a) of the Small Business Act (15 U.S.C.

1 636(a)) for which the application is approved on or
2 after the date of enactment of this Act, the Adminis-
3 trator shall, in lieu of the fees otherwise applicable
4 under paragraphs (23)(A) and (18)(A) of section
5 7(a) of the Small Business Act (15 U.S.C. 636(a)),
6 collect no fee;

7 (2) the Administrator shall, in lieu of the fees
8 otherwise applicable under section 5(b)(14) of the
9 Small Business Act (15 U.S.C. 634(b)(14)), collect
10 no fee;

11 (3) the Administrator shall, in lieu of the fee
12 otherwise applicable under section 503(d)(2) of the
13 Small Business Investment Act of 1958 (15 U.S.C.
14 697(d)(2)) for an institution described in subclause
15 (I), (II), or (III) of section 502(3)(B)(i) of that Act
16 (15 U.S.C. 696(3)(B)(i)), for any loan guarantee or
17 project subject to such subsection for which the ap-
18 plication is pending approval on or after the date of
19 enactment of this Act, collect no fee;

20 (4) a development company shall, in lieu of the
21 mandatory 0.625 servicing fee under section
22 120.971(a)(3) of title 13, Code of Federal Regula-
23 tions, (relating to fees paid by borrowers), collect no
24 fee; and

1 (5) the Administrator shall, in lieu of the fee
 2 otherwise applicable under section 503(d)(3) of the
 3 Small Business Investment Act (15 U.S.C.
 4 697(d)(3)), collect no fee.

5 (b) REIMBURSEMENT FOR WAIVED FEES.—

6 (1) IN GENERAL.—To the extent the cost of
 7 such payments is offset by appropriations, the Ad-
 8 ministrator shall reimburse each development com-
 9 pany that does not collect a servicing fee pursuant
 10 to subsection (a)(4).

11 (2) AMOUNT.—The payment to a development
 12 company under paragraph (1) shall be in an amount
 13 equal to 0.5 percent of the outstanding principal bal-
 14 ance of any guaranteed debenture for which the de-
 15 velopment company does not collect a servicing fee
 16 pursuant to subsection (a)(4).

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 18 are authorized to be appropriated to the Administrator for
 19 fiscal year 2009—

20 (1) \$600,000,000 for loan subsidies and for
 21 loan modifications for loans to small business con-
 22 cerns authorized under subsection (a)(1);

23 (2) \$15,000,000 for lender oversight under sec-
 24 tion 5(b)(14) of the Small Business Act (15 U.S.C.
 25 634(b)(14));

1 (3) \$50,000,000 for the elimination of fees
2 under subsection (a)(3);

3 (4) \$40,000,000 for payments under subsection
4 (b) to offset the elimination of fees under subsection
5 (a)(4); and

6 (5) \$10,000,000 for the elimination of fees
7 under subsection (a)(5).

8 (d) APPLICATION OF FEE CHANGES.—If funds are
9 made available to carry out subsections (a) and (b), the
10 Administrator shall eliminate the fees under subsection (a)
11 for any loan guarantee or project subject to such sub-
12 section for which the application is approved on or after
13 the date of enactment of this Act and make payments
14 under subsection (b) until the amount provided for such
15 purpose is expended.

16 (e) MAXIMUM LOAN AMOUNT.—Section 7(a)(3)(A) of
17 the Small Business Act (15 U.S.C. 636(a)(3)(A)) is
18 amended by striking “\$1,500,000 (or if the gross loan
19 amount would exceed \$2,000,000)” and inserting
20 “\$2,250,000 (or if the gross loan amount would exceed
21 \$3,000,000)”.

22 (f) MAIN STREET INCENTIVES.—

23 (1) IN GENERAL.—Section 502 of the Small
24 Business Investment Act of 1958 (15 U.S.C. 696) is
25 amended—

1 (A) by striking paragraphs (4) and (5) and
2 inserting the following:

3 “(4) LIMITATION ON LEASING.—If the use of a
4 loan under this section includes the acquisition of a
5 facility or the construction of a new facility, the
6 small business concern assisted—

7 “(A) shall permanently occupy and use not
8 less than a total of 50 percent of the space in
9 the facility; and

10 “(B) may, on a temporary or permanent
11 basis, lease to others not more than 50 percent
12 of the space in the facility.”; and

13 (B) by redesignating paragraph (6) as
14 paragraph (5).

15 (2) POLICY FOR 7(a) LOANS.—Section 7(a)(28)
16 of the Small Business Act (15 U.S.C. 636(a)(28)) is
17 amended to read as follows:

18 “(28) LIMITATION ON LEASING.—If the use of
19 a loan under this subsection includes the acquisition
20 of a facility or the construction of a new facility, the
21 small business concern assisted—

22 “(A) shall permanently occupy and use not
23 less than a total of 50 percent of the space in
24 the facility; and

1 “(B) may, on a temporary or permanent
2 basis, lease to others not more than 50 percent
3 of the space in the facility.”.

4 (g) LOW-INTEREST REFINANCING.—Section 502 of
5 the Small Business Investment Act of 1958 (15 U.S.C.
6 696), as amended by subsection (e)(1) of this section, is
7 amended by adding at the end the following:

8 “(6) PERMISSIBLE DEBT REFINANCING.—A fi-
9 nancing under this title may include refinancing of
10 existing indebtedness, in an amount not to exceed 50
11 percent of the projected cost of the project financed
12 under this title, if—

13 “(A) the project financed under this title
14 involves the expansion of a small business con-
15 cern;

16 “(B) the existing indebtedness is
17 collateralized by fixed assets;

18 “(C) the existing indebtedness was in-
19 curred for the benefit of the small business con-
20 cern;

21 “(D) the proceeds of the existing indebted-
22 ness were used to acquire land (including a
23 building situated thereon), to construct or ex-
24 pand a building thereon, or to purchase equip-
25 ment;

1 “(E) the borrower has been current on all
 2 payments due on the existing indebtedness for
 3 not less than 1 year preceding the proposed
 4 date of refinancing;

5 “(F) the financing under this title will pro-
 6 vide better terms or a better rate of interest
 7 than exists on the existing indebtedness on the
 8 proposed date of refinancing;

9 “(G) the financing under this title is not
 10 being used to refinance any debt guaranteed by
 11 the Government; and

12 “(H) the financing under this title will be
 13 used only for—

14 “(i) refinancing existing indebtedness;

15 or

16 “(ii) costs relating to the project fi-
 17 nanced under this title.”.

18 (h) UPDATED JOB CREATION REQUIREMENTS.—Sec-
 19 tion 501(e) of the Small Business Investment Act of 1958
 20 (15 U.S.C. 695(e)) is amended—

21 (1) in paragraph (1), by striking “\$50,000”
 22 and inserting “\$65,000”; and

23 (2) in paragraph (2), by striking “\$50,000”
 24 and inserting “\$65,000”.

1 (i) SIZE STANDARD SIMPLIFICATION.—Section 3(a)
 2 of the Small Business Act (15 U.S.C. 632(a)) is amended
 3 by adding at the end the following:

4 “(5) OPTIONAL SIZE STANDARD.—

5 “(A) IN GENERAL.—The Administrator
 6 shall establish an optional size standard for
 7 business loan applicants under section 7(a) and
 8 development company loan applicants under
 9 title V of the Small Business Investment Act of
 10 1958, which uses maximum tangible net worth
 11 and average net income as an alternative to the
 12 use of industry standards.

13 “(B) INTERIM RULE.—Until the date on
 14 which the optional size standard established
 15 under subparagraph (A) is in effect, the alter-
 16 native size standard in section 121.301(b) of
 17 title 13, Code of Federal Regulations (or any
 18 successor thereto) may be used by business loan
 19 applicants under section 7(a) and development
 20 company loan applicants under title V of the
 21 Small Business Investment Act of 1958.”.

22 (j) MAXIMUM LOAN SIZE.—Section 502(2)(A) of the
 23 Small Business Investment Act of 1958 (15 U.S.C.
 24 696(2)(A)) is amended—

1 (1) in clause (i), by striking “\$1,500,000” and
 2 inserting “\$3,000,000”; and

3 (2) in clause (ii), by striking “\$2,000,000” and
 4 inserting “\$3,500,000”.

5 (k) LOAN POOLING.—Section 5(g)(1) of the Small
 6 Business Act (15 U.S.C. 634(g)(1)) is amended—

7 (1) by inserting “(A)” before “The Administra-
 8 tion”;

9 (2) by striking the colon and all that follows
 10 and inserting a period; and

11 (3) by adding at the end the following:

12 “(B) A trust certificate issued under subparagraph
 13 (A) shall be based on, and backed by, a trust or pool ap-
 14 proved by the Administrator and composed solely of the
 15 guaranteed portion of such loans.

16 “(C) The interest rate on a trust certificate issued
 17 under subparagraph (A) shall be either—

18 “(i) the lowest interest rate on any individual
 19 loan in the pool; or

20 “(ii) the weighted average interest rate of all
 21 loans in the pool, subject to such limited variations
 22 in loan characteristics as the Administrator deter-
 23 mines appropriate to enhance marketability of the
 24 pool certificates.”.

25 (l) ALTERNATIVE VARIABLE INTEREST RATE.—

1 (1) IN GENERAL.—Section 7(a)(4)(A) of the
 2 Small Business Act (15 U.S.C. 636(a)(4)(A)) is
 3 amended by striking “prescribed by the Administra-
 4 tion,” and inserting: “prescribed by the Administra-
 5 tion, including, on variable rate loans, a nationally
 6 recognized prime rate of interest and at least 1
 7 other index as an alternative thereto at the option
 8 of the participating lender,”.

9 (2) APPLICABILITY.—Not later than 180 days
 10 after the date of enactment of this Act, the Adminis-
 11 trator shall select not less than 1 alternative index
 12 under section 7(a)(4)(A) of the Small Business Act,
 13 as amended by paragraph (1) of this subsection, and
 14 make such index available for use by participating
 15 lenders.

16 (m) DEFINITIONS.—In this section—

17 (1) the terms “Administration” and “Adminis-
 18 trator” mean the Small Business Administration
 19 and the Administrator thereof, respectively;

20 (2) the term “development company” has the
 21 meaning given the term “development companies” in
 22 section 103 of the Small Business Investment Act of
 23 1958 (15 U.S.C. 662); and

1 (3) the term “small business concern” has the
2 same meaning as in section 3 of the Small Business
3 Act (15 U.S.C. 632).

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